



UNDERSTANDING LOOK OUT CIRCULARS: A GUIDE TO NAVIGATING THE REGULATORY LANDSCAPE

INTRODUCTION

Look-Out Circular (hereinafter referred to as “**LOC**”) refers to a document issued to monitor, trace and prevent the movement of persons accused of cognizable offenses who are required to face criminal prosecution in India. Law enforcement agencies often use LOCs as a coercive measure to stop any individual wanted or under suspicion by the police or an investigating agency from leaving or entering the country through designated land, air, and sea ports.

Interestingly, in the landmark cases of **Vikram Sharma & Ors v Union of India, 171 (2010) DLT 671** and **Sumer Singh Salkan v Assistant Director & Ors, (2010) ILR 6 Delhi 706**, Hon'ble High Court of Delhi has clearly held that there is no legal definition of a LOC. However, it is still comprehended as an executive creation used to fulfill a legal requirement in the form of an instruction

or communication circular from an authorized government agency with reference to a person who is wanted by an agency.

Therefore, in simpler terms, LOC can be said to be a form of a punitive or restrictive tool aimed at:-

1. Monitoring the movement of persons to prevent them from entering or leaving the Country, or
2. Coercing the surrender of such individuals to investigative agencies or courts, or
3. Securing their attendance before investigative agencies or Courts.

Moreover, the Central Government, State Government, Criminal Courts, and many investigation agencies have requisite powers to request for issuance of LOCs. These agencies include the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Directorate of Revenue Intelligence (DRI), Customs and Income Tax Department, and Police Authorities in different states. Pertinently, apart from these agencies, there is no authority on whose request a LOC can be issued.

FRAMEWORK OF LOCS

As mentioned above, since LOC does not have express statutory backing in legislation, the power to issue LOCs and their regulation stems from the executive in the form of an Office Memorandum issued by the Ministry of Home Affairs (MHA).

The Ministry of Home Affairs first set out the guidelines for issuing LOCs via its Letter dated September 5, 1979 (25022/13/78-F.I). After that, the guidelines were further refined and superseded by another office memorandum issued by the MHA dated December 27, 2000 (25022/20/98/F.IV).

However, the 2000 guidelines left much to the discretion and wisdom of the issuing authorities which often led to indiscriminate use of powers by the authorities. It created much confusion about the procedure for issuing LOCs and the remedies available against such issuance.

Consequently, in the case of *Sumer Singh Salkan v. Asstt. Director & Ors*, (2010) ILR 6 Delhi 706, Hon'ble High Court of Delhi has set out clear guidelines for the issuance and closure

of LOCs and answered four questions raised by a lower Court on the LOC:-

“a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular, and under what circumstances?”

Ans- Recourse to LOC can be taken by investigating agency in cognizable offenses under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures, and there was a likelihood of the Accused leaving the country to evade trial/arrest.

b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?

Ans- The Investigating Officer shall make a written request for LOC to the officer as notified by the Ministry of Home Affairs circular, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening

LOC by passing an order in this respect.

c) What is the remedy available to the person against whom such Look-out-Circular has been opened?

Ans- The person against whom LOC is issued must join the investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered the issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued it and can also be rescinded by the trial court where the case is pending or has jurisdiction over the concerned police station on an application by the person concerned.

d) What is the role of the concerned Court when such a case is brought before it, and under what circumstances the subordinate courts can intervene?

Ans- LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or canceling LOC is with the jurisdiction of cancellation of NBW (Non-bailable warrants) or affirming NBWs."

PROCEDURE FOR ISSUING LOCS

Taking note of the aforesaid judgment, the MHA issued a much comprehensive and clearer Office Memorandum dated October 27, 2010 (25016/31/2010-Imm) on the issuance of LOCs, which further superseded the earlier office memorandum. The said 2010 Office Memorandum laid down the following guidelines for the issuance of the LOC:-

AUTHORITY FOR OPENING A LOC

a. The request for opening a LOC would be made by the originating agency to the Deputy Director, Bureau of Immigration (BoT), East Block VIII, RK Puram, New Delhi - 66 (Telefax: 011-2619244) in the prescribed Proforma.

REQUEST FOR OPENING A LOC

b. The request for the opening of LOC must invariably be issued with the approval of an officer not below the rank of

1. Deputy Secretary to the Government of India; or
2. Joint Secretary in the State Government; or
3. District Magistrate of the District concerned; or
4. Superintendent of Police (SP) of the District concerned; or
5. SP in CBI or an officer of an equivalent level working in CBI; or
6. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or
7. Deputy Commissioner or an officer of an equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or

8. Assistant Director of IB/BOI; or
9. Deputy secretary of R&AW; or
10. An officer not below the level of Superintendent of Police in the National Investigation Agency, or
11. Assistant Director of Enforcement Directorate; or
12. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or
13. The designated officer of Interpol

c. Further, LOCs can also be issued as per directions of any Criminal Court in India.

DETAILS OF THE OFFICER

c. The name and designation of the officer signing the Proforma for requesting the issuance of a LOC must invariably be mentioned, without which the request for issuance of LOC would not be entertained.

- d. The contact details of the originator must be provided in column VI of the enclosed Proforma. The control room's contact telephone/mobile number should also be mentioned to ensure proper communication for effective follow-up action.

DETAILS OF THE PERSON AGAINST WHOM A LOC HAS TO BE OPENED

- e. Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the prescribed Proforma. It should be noted that a LOC cannot be opened unless a minimum of three identifying parameters, apart from sex and nationality, are available. However, LOC can also be issued if the name and passport particulars of the person concerned are available. The originator is responsible for constantly reviewing the LOC requests and proactively providing additional parameters to minimize harassment to genuine passengers.

LEGAL LIABILITY FOR OPENING A LOC

- f. The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

RECOURSE TO LOC

- g. Recourse to LOC is to be taken in cognizable offenses under IPC or other penal laws. The details in column IV in the Proforma regarding the reason for opening LOC must invariably be provided, without which the subject of a LOC will not be arrested/detained.
- h. In cases where there is no cognizable offense under IPC or other penal laws, the LOC subject cannot be detained/arrested, or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.

VALIDITY OF LOC

- i. The LOC will be valid for a period of one year from the date of issue, and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one-year validity shall be deemed to have lapsed unless the agencies concerned specifically request for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in the following cases:
 1. ban-entry LOCs issued for watching the arrival of wanted persons, which have a specific duration);
 2. loss of passport LOCs (which ordinarily continue till the validity of the document);
 3. LOCs regarding impounding of passports;
 4. LOCs issued at the behest of Courts and Interpol.

EXCEPTIONS FOR OPENING OF LOC

- j. In exceptional cases, LOCs can be issued without complete parameters and /or case details against CI suspects, terrorists, anti-national elements, etc. In the larger national interest.

OPENING OF LOC BY STATUTORY BODIES

- k. The following procedure will be adopted in case statutory bodies like the NCW, the NHRC, and the National Commission for Protection of Children's Rights request to prevent any Indian/ foreigner from leaving India. Such requests, along with the full necessary facts, are first to be brought to the notice of law enforcement agencies like the police. The S.P. concerned will then request to issue a LOC upon an assessment of the situation and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LoCs, as detailed in para 8 (b) above.

ISSUANCE AND VALIDITY OF LOCs

Based on the laid down guidelines of the MHA, one can say that the Bureau of Immigration under the MHA is only the executing agency, while the LOCs were to be issued at the request of the investigation agencies. Moreover, since immigration posts are handled by the Bureau of Immigration officials, they are the first responders. Once a person against whom a LOC has been issued reaches immigration, the Bureau of Immigration is expected to inform the agency that has issued the LOC. However, the LOCs can be modified, deleted, or withdrawn only at the originator's request. The Bureau of Immigration is not authorized to arrest or detain anyone. The agency that has issued the LOC is only authorized to decide the next course of action.

A LOC is valid for only one year and has to be reissued after it expires. In *S Martin v The Deputy Commissioner of Police, MANU/TN/0230/2014*, the Court succinctly remarked, “*the LOC cannot be issued periodically for an indefinite period, and issuance of the same cannot hang on like a Damocles sword on a person’s head.*”

Moreover, such LOCs could be issued against such persons accused of a cognizable offense only when:-

- (i) There is an NBW pending against them; and
- (ii) They are likely to evade the process of law.

However, exceptions had also been created for issuing LOCs against terrorists, anti-national elements, counter-intelligence suspects, etc., in the '*larger national interest.*'

Now the scope of these exceptions has been further expanded on 5th December 2017 by making amendments in clause (j) of the 2010 Office Memorandum. The amendment has now-

1. Empowered the authorized officers, in '*exceptional circumstances*' to send a request for the opening of the LOC if it appears to them, based on inputs received, that the departure of such person is detrimental to the sovereignty or security, or integrity of India or the person may indulge in terrorism or offenses against State or otherwise in the larger public interest.

2. Permitted the issuance of LOCs in cases where there is a potential to hamper-
 - a. *The bilateral relations between countries or*
 - b. *The strategic/economic interests of the country.*
3. Substituted the term '*larger national interest*' with '*larger public interest.*'

Moreover, after several businessmen such as Vijay Mallya, Mehul Choksi, and Nirav Modi fled the country after defaulting on loans, the MHA became more vigilant and, consequently, in 2018, brought further changes to the 2010 guidelines. The new changes also empower all the officers not below the rank of Chairman/ Managing Directors/ Chief Executive of all **Public Sector Banks** to request the opening of a LOC against willful defaulters from fleeing India. This addition has been allowed to the existing list of authorized officers as the conduct of these wanted fugitives could be detrimental to the country's economic interests.

LOC AND THE CONFLICT WITH THE RIGHT TO TRAVEL

Unlike any substantive law such as Section 41(1) of Cr.P.C., which gives power to the police to arrest, without an order or warrant from a Magistrate, any person against whom there is credible information or reasonable complaint or reasonable suspicion, the LOCs lacks a legal definition with any statutory backing. It is only regulated by the executive through the guidelines formulated by the MHA.

It has been stated in the case of *Priya Parameswaran Pillai v Union of India, 2015 SCC OnLine Del 7987* that the LOCs cannot be given the status of law, as in the light of the *Maneka Gandhi v Union of India, AIR 1978 SC 597* and *AK Gopalan v State of Madras, AIR 1950 SC 27* judgments, the term 'law' mentioned can only be construed as enacted law within the scope of Art. 21. Hence, without expressed statutory backing, the horizon and authority of LOC which goes on to the extent of affecting an individual's fundamental right become even more problematic.

The amendments to the existing guidelines in 2017 and 2018 were also

brought because no objective criteria were present under the 2010 Office Memorandum for determining these *exceptional circumstances*, which led to the abuse of powers by the requesting agencies. They often resorted to issuing LOCs per their whims and fancies, harassing the alleged individual. Therefore, the arbitrary issuance of LOCs often creates a problem of conflict with the individual's fundamental rights, especially the right to travel.

The Courts have time and again criticized this practice of the investigative agencies of blatantly issuing LOCs and then failing to demonstrate the applicability of the exceptions, holding such actions to be violative of Articles 19 and 21 of the Constitution of India. The Courts have repeatedly reiterated that the power to issue LOC should only be used in exceptional circumstances and not as a matter of routine.

In the case of *Vikram Sharma & Ors v Union of India & Ors, 171 (2010) DLT 671*, the Hon'ble Delhi High Court has categorically observed,

“The power to suspend, even temporarily, a passport of a citizen, the power to issue an LOC, the power to ‘off-load’ a passenger and prevent him or her from traveling are all extraordinary powers, vested in the criminal law enforcement agencies by the statutory law. These are powers that are required under the law, to be exercised with caution and only by the authorities who are empowered by law to do so and then again only for valid reasons.”

Further, in *Dhruv Tewari v Directorate of Enforcement, MANU/DE/2931/2020*, the Hon'ble Delhi High Court observed that it has to be seen that only the persons who are in suspicion, those under investigation or trial, or those of cognizable offense under IPC can be detained, arrested, or prevented from leaving the country, the originating agency can, at the most only ask for intimation of arrival or departure.

Moreover, the Hon'ble Punjab and Haryana High Court in *Noor Paul v Union of India & Ors, MANU/PH/0561/2022* has clarified that the issuance of a copy of the LOC, the

reasons for its issuance, and an opportunity for a post-decisional hearing to the Petitioner shall be read as part and parcel of the Official Memorandums issued by the MHA. While setting aside the LOC issued against the petitioner, the court here directed the Union of India & MHA to fulfill the aforesaid requirements as soon as possible.

Therefore, one can conclude that the primacy of an individual's fundamental rights is to be maintained while allowing LOC against him only in exceptional circumstances.

GROUNDS ON WHICH COURTS PERMIT FOREIGN TRAVEL AND WITHDRAWAL OF THE LOC

Generally, there are two situations in which a LOC is issued against a person. It is either issued during the pendency of the criminal proceedings before a court or when the case is still at the stage of investigation, and no complaint or charge sheet has been filed before the court.

The de-facto onus lies on the aggrieved person to satisfy the courts of his innocence and/or his non-absconding.

The aggrieved person in both these cases can avail the remedy by approaching the competent authority seeking cancellation of the LOC by satisfying that the LOC has been wrongly issued against him. These authorities can be:

- The officer on whose behest LOC has been issued, or
- The Court where the trial is pending, or
- **The High Court** under the Writ jurisdiction as the issuance of LOC is an executive action founded in Circulars/ Office memorandum, and the same is open to judicial review.

Though, it must be kept in mind that the High Courts can refrain from exercising their extraordinary jurisdiction when the investigating agencies have made out a *prima facie* case for the issuance of the LOC. However, they also might actively interfere in cases where grave illegality in the issuance of a LOC has been found. Though the circumstances aren't exhaustive, the Courts generally tend to intervene and put appropriate safeguards when unnecessary and arbitrary restrictions on the citizen's

fundamental rights are placed. These grounds can be:

❖ WHEN IT CURTAILS THE PERSONAL LIBERTY OF THE INDIVIDUAL

In the case of *EV PerumalSamy Reddy v State, 2013 SCC OnLine Mad 4092*, the Hon'ble Madras High Court, while setting aside a LOC held, "*It is basic that merely because a person is involved in a criminal case, he is not denuded of his Fundamental Rights. It is fundamental for a person to move anywhere he likes, including foreign countries. One's such personal freedom and liberty cannot be abridged.*"

In *Soumen Sarkar v State of Tripura & Ors, MANU/TR/0164/2021*, the Hon'ble Tripura High Court quashed LOCs issued against an NRI journalist accused of publishing articles allegedly defaming Tripura's Chief Minister. The Court observed that the action curtailing or taking away personal liberty must be reasonable, proportionate, and not based on abstract or hypothetical considerations. The LOCs cannot be issued as a matter of course but only when reasons exist where the accused

deliberately evades arrest or does not appear in the trial court.

❖ WHEN IT AFFECTS THE LIVELIHOOD OF THE INDIVIDUAL

The court has held that the LOCs can be stayed in the matters concerning and affecting the individual's Right to Travel Abroad for Livelihood. The same was also affirmed by the Hon'ble Calcutta High Court in the case of *Mritunjay Singh v Union of India & Ors, MANU/WB/0342/2021*.

In *Vikas Chaudhary v Union of India, MANU/DE/0100/2022*, the Hon'ble Delhi High Court came down heavily on the CBI for issuing a LOC against a man who earned his livelihood by exporting garments to foreign countries. The Court here also held that LOC does not only curtail the said individual's right to personal liberty but also his right to livelihood, as enshrined in Article 21 of the Constitution of India. Since the LOCs restrict an individual's right to travel, they should only be issued in circumstances that are exceptional, and the reasons for issuance of the same should be cogent

❖ WHEN A LOC IS ISSUED IN HOT HASTE

In the case of *Karti P Chidambaram v. Bureau of Immigration*, MANU/TN/3645/2018, the Hon'ble Madras High Court set aside the LOC issued against the petitioner after holding that the LOC was issued in hot haste and even the conditions precedent for issuance of such LOC did not exist. The court further observed that such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court.

❖ WHEN LOC INFRINGES AN INDIVIDUAL'S FREEDOM OF FREE MOVEMENT AND SPEECH

In the case of *Rana Ayyub v Union of India & Anr*, MANU/DE/5521/2022, the Hon'ble Delhi High Court set aside the LOC issued against the Petitioner as being devoid of merits as well as for infringing the human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. The Hon'ble Court held that a balance has to be struck qua the right of the investigation agency to

investigate the matter as well as the fundamental right of the petitioner of movement and free speech.

❖ WHEN IT DOES NOT AFFECT THE ECONOMIC INTEREST OF THE COUNTRY

The recent judicial trends, such as in the case of *Mrs. Leena Rakesh v Bureau of Immigration, Ministry of Home Affairs*, MANU/KA/2700/2022, indicate that the banks cannot seek the LOC for the recovery of dues as such if there is no involvement of economic interest in the country.

The Hon'ble Punjab & Haryana High Court very recently, in the case of *Vikas Aggarwal and Anr v Union of India & Ors*, MANU/PH/1873/2022, also said that the Look Out Circulars cannot be requested for the recovery of dues that are expected by Indian banks to their foreign subsidiaries.

Similarly, in the case of *Brij Bhushan Kathuria v. Union of India & Ors*, MANU/DE/0737/202, the Hon'ble Delhi High Court stated that the phrases such as 'economic interest' or 'larger public interest' cannot be expanded in a manner so as to include an Independent

Director who was in the past associated with the company being investigated, without any specific role being attributed to him.

❖ WHEN THE CONCERNED INDIVIDUAL IS NOT A FLIGHT RISK

In the case of *Rahul Surana v The Serious Fraud Investigation Office & Ors*, *MANU/TN/1605/2022*, the Hon'ble Madras High Court set aside the LOC against the Petitioner after considering that even after the elapse of three years, neither any concrete evidence has been found to implicate the Petitioner nor there has been any instance of Petitioner evading the summons calling for his attendance/appearance. It was concluded that there is no tangible material to support that the Petitioner is a flight risk, and thus, he can't be denied his Fundamental Right to travel abroad just because of this bald assertion.

CONCLUSION

Although the Executive has not been able to clearly establish statutory backing for the 2010 O.M. and LOCs in general, LOCs continue to be a popular

tool amongst law enforcement, particularly when investigating economic offenders. The power to prevent under LOC is extraordinary and quite drastic in its nature, which abridges an individual's right to travel. It becomes even more complicated due to the absence of substantive law which can provide a legal definition for its lawful existence. Despite the guidelines and instructions, there have been severe cases of misuse of power for extraneous grounds.

Given the lack of statutory basis and the arbitrariness with which LOCs are sometimes issued, courts also have been vigilant in safeguarding the right to travel abroad, which has been recognized as a part of the fundamental rights, and keeping a check over the arbitrary issuance of the LOCs. The courts have often come to the aid of the citizens enabling them to avail themselves of the benefit of freedom of traveling with certain conditions and set aside LOCs when challenged on the grounds that the LOCs adversely impact freedom of speech and expression, to practice trade, business, or other professions as has also been held in cases, as mentioned above.

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