



What Is a Lookout Circular (LOC)?

In simple terms, an LOC is an alert created by the Bureau of Immigration, Ministry of Home Affairs (BoI) at Indian ports of entry. The alert is in respect of a subject individual who is involved in a cognisable offence, against whom action is proposed. It is created pursuant to a request made by certain designated Indian authorities.

Consequences of an LOC may vary from tracking arrival and departure of the subject individual by the concerned authority to seeking detention of the individual, handing them over to the local police station and informing the authority concerned.

While LOCs prove to be an effective administrative measure in nabbing offenders who attempt to flee the country, if due process is not followed or if a request initiated by an authority for issuance of an LOC lacks justification, LOCs have been

found to violate Article 21 of the Indian Constitution. Accordingly, depending on who you represent, these are key factors to be assessed at the outset of the proceedings.

Origin of LOCs Under Indian Law

LOCs do not owe their origin to any statute, although in a way the concept does find mention in the Passport Act, 1967, where designated officers are empowered to, inter alia, suspend passports and communicate such orders to immigration authorities for prohibiting travel.

Guidelines for issuing LOCs first emanated from a Ministry of Home Affairs letter dated 5 September 1979 (Letter No 25022/13/78-FI). The letter stated that LOCs were issued to check arrival/departure of foreigners and Indians “whose arrival/departure has been banned by the concerned authorities”. As per the letter, power to issue LOCs vested with eight Indian authorities, including:

Ministry of External Affairs;
Interpol;
State Police Authorities; and
Central Bureau of Investigation.
Subsequently, an Office Memorandum dated 27 December 2000 (OM 2000) was issued by the Ministry of Home Affairs, and laid down fresh guidelines and a stepwise process for issuance of LOCs qua Indian citizens. As per the OM 2000: a request for issuance of an LOC would have to be made to all immigration check posts across the country, along with furnishing particulars of the subject individual; the request should bear the approval of an officer not below the rank of Deputy Secretary (government of India) or Joint Secretary (state government); and the validity of an LOC would be one year, unless a prior extension request is made.

Judicial Clarity Over LOCs

The Delhi High Court in *Sumer Singh Salkan v Asst Director*, [ILR (2010) 6 Del 706] addressed key issues regarding issuance of LOCs, which included the following.

Categories of cases in which investigating agencies can seek recourse to LOCs

This includes cognisable offences under the Indian Penal Code, 1860 or other penal laws, where the accused was deliberately evading arrest or not appearing before trial court despite non-bailable warrants, and likelihood of the accused leaving the country to evade trial/arrest.

Procedure to be followed for issuance of an LOC

A written request is required to be made to the designated officer, giving details and reasons for seeking the LOC. Upon receipt and confirming the completeness of particulars, the competent officer shall issue directions for opening an LOC by way of an order.

Remedy available to the subject individual

The subject individual must join the investigation by appearing before the investigating officer, or surrender to the court concerned, as the case may be. If applicable, they should satisfy the authority that the LOC was wrongly issued against them. Upon being satisfied, the LOC may be withdrawn by the authority or rescinded by the court.

“...issuance of an LOC is an executive action which is open to

judicial review by a High Court under writ jurisdiction.”

2012 Office Memorandum

Taking into account the above directions, the MHA released another Office Memorandum dated 27 October 2010 (OM 2010) which laid down the following key guidelines.

- The request for issuing the LOC should be addressed to the Deputy Director, Bureau of Immigration. The request could be initiated by certain designated authorities, including the Ministry of External Affairs, the Department of Revenue Intelligence, customs and income tax authorities, Interpol, the Central Bureau of Investigation, regional passport offices and the State Police.
- The request would have to be approved by designated authorities, including the District Magistrate, the Superintendent of Police, the Assistant Director Enforcement Directorate, the Deputy Commissioner or an officer of equivalent level in the Directorate of

Revenue Intelligence, the Central Board of Direct Taxes or the Central Board of Excise and Customs. This requirement may be waived in certain exceptional circumstances.

- The name and designation of the officer raising the request should be mentioned, failing which the request would not be entertained.
- Automatic deletion of LOCs after expiry of the one-year period would not occur in cases where passports are to be impounded or where LOCs are issued pursuant to court directions.

Remedies for the Subject Individual

An individual, if aggrieved by issuance of an LOC, can consider the following remedies.

Where the LOC is issued at the behest of an investigating officer, the subject individual may furnish a representation detailing reasons why the LOC should be withdrawn.

Certain studies suggest that if the LOC is issued in the context of a matter where trial is pending, an

application may be filed for recalling/cancelling the LOC with the concerned court where trial is pending. However, since the subordinate court's jurisdiction is commensurate with the jurisdiction of cancellation or affirmation of non-bailable warrants – and LOCs emanate from an administrative action, and cancellation or suspension of an LOC seeks enforcement of a fundamental right – the power to cancel or recall an LOC may not vest with the trial court. At best, the trial court may issue a direction to the investigating officer to consider recalling the LOC.

A subject individual can always approach a High Court under writ jurisdiction, as issuance of an LOC is an executive action which is open to judicial review by a High Court under writ jurisdiction. This has been categorically laid down in *Karti P Chidambaram v Bureau of Immigration*, [2018 SCC Online Mad 2229], wherein the Madras High Court held that power of judicial review under Article 226 of the Constitution includes the power to cancel an LOC.

Judicial Scrutiny Where the LOC is Abuse of the Process of Law

While exercising powers under writ jurisdiction, High Courts have observed the following.

Vikas Chaudhary v Union of India, [(2022) 1 HCC (Del) 124], Delhi High Court

Where LOCs cannot be issued on a mere suspicion of opening bank accounts in a foreign country, this encroaches upon the fundamental right of a person to travel abroad.

Brij Bhushan Kathuria v Union of India, [2021 SCC OnLine Del 2587], Delhi High Court

Phrases such as “economic interest” or “larger public interest” cannot be expanded to include an independent director without any specific role being attributed to them and who was earlier associated with a company under investigation. This also ties in with the principle of vicarious liability of a director acting on behalf of a company.

Additionally, courts have also directed that a copy of the LOC, along with reasons for issuance, should also be made available to the subject individual, to be read as part and parcel of the Official Memorandums issued for issuance of LOCs [*Noor Paul v Union of India*, 2022 SCC OnLine P&H 3408].

Pragmatic Solutions

The legal literature and case law relating to LOCs appears to suggest that while security and national interest of the country should not be jeopardised, and that LOCs should be used as an efficacious remedy for nabbing wrongdoers, innocent persons should nonetheless not be subjected to the arduous and cumbersome process.

The latter also has its roots in the process gap, which includes lack of inter-departmental communication and individual inefficiency. There are lacunas that must be bridged – for example, deletion of the LOC request once the mandate is fulfilled. At the same time, agencies and courts must exercise abundant caution in directing or issuing the opening of LOCs.

In parallel, legislative amendments may be considered, such as introducing a time-bound legal process (eg, 180 days) in deciding the issue of suspension of an LOC

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