



Bangalore Chamber of Industry and Commerce

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Finance & Capital Markets

Circular No.11

11.01.2010

All Members

Dear Sirs,

We enclose herewith the following Circular issued by the Reserve Bank of India, Mumbai for your reference and record.

1. RBI/2009-2010/279, A. P. (DIR Series) Circular No.24, December 30, 2009 - Establishment of Branch (BO)/Liaison Offices (LO) in India by Foreign Entities — Delegation of Powers

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

RBI/2009-2010/279, A. P. (DIR Series) Circular No.24, December 30, 2009

Establishment of Branch (BO)/Liaison Offices (LO) in India by Foreign Entities — Delegation of Powers

Attention of Authorised Dealer Category – I banks is invited to Notification No. FEMA 22/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 as amended from time to time, in terms of which a person resident outside India requires prior approval of the Reserve Bank for establishing Branch (BO)/ Liaison Offices (LO) in India. As announced in the Mid-term Review of the Annual Policy Statement for the Year 2008-09 (para 143), the draft circulars regarding delegation of powers to Authorised Dealers for extension of the validity period of LOs, closure of BO / LOs of foreign entities in India and

the eligibility criteria and procedural guidelines for BO / LOs of foreign entities in India were placed on Reserve Bank's website for public comments. On the basis of the feedback received from the public, the final guidelines have been issued vide our A. P. (DIR Series) Circular No.23 dated December 30, 2009.

2. As indicated therein, the application in form FNC by the foreign entity (other than those engaged in insurance and banking) for opening of BO / LO in India should be routed through a designated AD Category - I bank. The designated AD Category - I bank is required to forward the application/s, along with the relevant documents and their comments / recommendations, to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai- 400 001. The designated AD Category - I bank should exercise due diligence in respect of the applicant's background, antecedents of the promoter, nature and location of activity, sources of funds, etc. and also ensure compliance with the KYC norms before forwarding the application together with their comments/ recommendations to the Reserve Bank.

3. Applications from banks and insurance companies for opening of BO/LO will continue to be received and examined directly by the Department of Banking Operations and Development of the Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively, as hitherto. Approval of the Reserve Bank is not required to establish a branch/unit in Special Economic Zones for undertaking manufacturing and service activities, subject to compliance with the conditions specified in Notification No. FEMA 102/2003-RB dated October 3, 2003 read with A.P. (DIR Series) Circular no. 58 dated January 16, 2004.

4. In order to provide a uniform framework, a Unique Identification Number (UIN) will be allotted to both the existing as well as new BO / LOs. This UIN is required to be quoted in all future references made to the Reserve Bank by the BO / LO / designated AD Category – I bank. Consequent upon delegation of powers from February 01, 2010 existing BO / LO will also have to necessarily approach the Reserve Bank through their designated AD Category -I bank for their requests/references.

5. With a view to liberalizing the existing procedure in respect of BO/ LOs, it has been decided to delegate the powers to the designated AD Category - I banks, as under :

i) Submission of Annual Activity Certificate

At present, BO/ LOs are required to submit Annual Activity Certificate (Annex) from their Auditors to the Central Office / Regional Office of the Reserve Bank, certifying that the BO / LO has carried out only those activities which are approved by the Reserve Bank. With effect from February 01, 2010, the Annual

Activity Certificate as at the end of March 31 shall be submitted, on or before April 30, to the designated AD Category – I bank and a copy to the Directorate General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002, by the following :

In case of a sole BO/ LO, by the BO/LO concerned;

In case of multiple BO / LOs, a combined Annual Activity Certificate in respect of all the Offices in India by the Nodal Office of the BOs / LOs.

The designated AD Category - I bank shall scrutinize the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank. In the event of any adverse findings being reported by the Auditor or noticed by the designated AD Category -I bank, the same should be reported immediately by the designated AD Category–I bank to the respective Regional Office of the Reserve Bank in respect of LOs and to the Central Office of the Reserve Bank in the case of BOs, along with the copy of the Annual Activity Certificate and their comments thereon.

ii) Extension of validity period of Liaison Offices

The designated AD Category - I bank may, with effect from February 01, 2010, extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted by the Reserve Bank, if the applicant has complied with the following and the application is otherwise in order.

The LO has submitted the Annual Activity Certificates for the previous years (initially, for existing LO, the designated AD Category-I banks may obtain confirmation from the Regional Office concerned about timely submission of the Certificate for previous years); and

The account of the LO maintained with the designated AD Category – I bank is being operated in accordance with the terms and conditions stipulated in the approval.

Such extension may be granted, as expeditiously as possible, say within a period of one month from the receipt of the request under intimation to the Regional Office concerned and to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai-400 001, as the case may be, quoting the reference number of the original approval letter and the UIN.

It may be noted that in the case of LOs of banks and entities engaged in insurance business, the application has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank of India and

Insurance Regulatory and Development Authority (IRDA), respectively as stipulated by them, as hitherto. Further, no extension would be considered for LOs of entities which are NBFCs and those engaged in Construction and Development sectors (excluding infrastructure development). Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

iii) Closure of Branch / Liaison Office/s

With effect from February 01, 2010, the work related to closure of Branch / Liaison Offices, hitherto being done by the Reserve Bank (Central Office in the case of Branch Offices and Regional Office in the case of Liaison Offices), shall be handled by the designated AD Category - I bank. The closure formalities shall be dealt with in accordance with Regulation 6 (1) (iii) of Notification No. FEMA 13/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Remittance of Assets) Regulations 2000, as amended from time to time. In terms of the aforementioned Regulation, following documents are required to be obtained by the designated AD Category – I bank, while considering the closure of the BO/ LO and permitting the remittance of winding up proceeds :

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

B) 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 unrepatriated to India.

C) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.

D) 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.

E) 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.

In addition to the above, any other document/s, specified by the Reserve Bank while granting approval may be obtained and verified. The designated AD Category - I banks may also ensure that the BO / LOs had filed their respective Annual Activity Certificates with the Reserve Bank for the previous years, in respect of the existing Branch/Liaison Offices. Confirmation about the same may be obtained from the Central Office of the Reserve Bank in the case of BOs and from the Regional Office concerned in the case of LOs.

On receipt of the documents as mentioned above, the AD Category - I bank may, after satisfying themselves about the bonafides, allow closure of the Office by closing the account maintained with them and remit the proceeds to the overseas entity. Closure of such BO / LO should be reported by the designated AD Category - I bank to the Reserve Bank (the Regional Office concerned for LOs and Central Office for BOs), along with a declaration stating that all the necessary documents submitted by the BO / LO have been scrutinized and found to be in order. If the documents are not found in order, the AD Category - I bank may forward the application to the Reserve Bank, with their observations, for necessary action.

6. All the documents relating to the BO / LO operations may be retained by the AD Category - I bank for verification by the internal auditors of the AD / inspecting officers of the Reserve Bank.

7. Cases which are not covered under the delegated powers will continue to be referred to the Reserve Bank, by the designated AD Category – I bank.

8. Necessary amendments to the Foreign Exchange Management (Remittance of Assets) Regulations, 2000 notified vide Notification No.FEMA.13/2000-RB dated May 3, 2000 and the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 notified vide Notification No.FEMA.22/2000-RB dated May 3, 2000 are being issued separately.

9. AD Category - I banks may bring the contents of this Circular to the notice of their constituents/customers concerned.

10. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Sd/-
(D. Mishra)
Chief General Manager

[Annex to A. P. (DIR Series) Circular No.24 dated December 30, 2009]

Annual Activity Certificate
(To be submitted as on March 31,.....on or before April 30,.....).

To whomsoever it May Concern

This is to certify and confirm that during the period from _____ to _____, the Branch/Liaison Office/s with PAN No. ----- of M/s _____ (UIN- _____) has/ have undertaken only those activities that have been specifically permitted by the Reserve Bank vide its approval letter/s No/s. _____ dated _____ and has/have complied with the terms and conditions specified in the above mentioned letter/s.

(Signature of the Auditor/s)

(Name of the Chartered Accountant)
ICAI Membership No.:

Address:

Place :
Date :

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