

May , 2008

To
All Authorised Dealers Category - I banks

Madam / Sir,

**Establishment of Branch / Liaison Offices in India
by foreign entities — Delegation of Powers**

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to Notification No. FEMA 22/2000-RB dated May 3, 2000, as amended from time to time, in terms of which a person resident outside India requires prior approval of the Reserve Bank of India for establishing Branch / Liaison Office in India. Further, the eligibility criteria and the procedural guidelines for approval in this regard have been placed in the public domain www.rbi.org.in [cf A. P. (DIR Series) Circular No. ----- dated April----, 2008].

2. As indicated therein, the application in form FNC by the foreign entity (other than those engaged in insurance and banking) for opening of Branch (BO) / Liaison (LO) Offices 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.

3. Applications from banks and insurance companies will continue to be received directly and examined by the Department of Banking Operations and Development of the Reserve Bank and the Insurance Regulatory and Development Authority (IRDA), respectively, as hitherto. The guidelines contained in this Circular are not applicable to such entities and they shall continue to be governed by the terms and conditions stipulated by the respective approving authority.

4. In order to provide a uniform framework, a Unique Identification Number (UIN) will be allotted to both the existing as well as new Branch / Liaison Offices. This UIN is required to be quoted in all references made to the Reserve Bank by the BO / LO / designated AD Category – I bank. Consequent to the delegation of powers from July 01, 2008, 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 streamline the existing procedures, it has been decided, with effect from July 01, 2008, to delegate the following items of work to the designated AD Category - I banks.

i) Submission of Annual Activity Certificate

At present, Branch / Liaison Offices are required to submit Annual Activity Certificate (Annex) from their Auditors to RBI certifying that the BO / LO have carried out only those activities as approved by the Reserve Bank. With effect from July 01, 2008, the Annual Activity Certificate should be submitted to the designated AD Category – I bank. The designated AD Category - I bank shall scrutinize the Activity Certificate and ensure that the activities are carried out in accordance with the terms and conditions of the approval of the Reserve Bank. In the event of any adverse findings being reported by the Auditor, the same should be reported immediately by the 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 Certificate and their comments thereon.

ii) Extension of validity period of Liaison Offices

The designated AD Category - I bank may extend the validity period of Liaison Office/s for a further period of 3 years from the date of expiry of the original approval / extension granted by the Reserve Bank, if the application is otherwise in order, i.e.

The Liaison Office has submitted the Annual Activity Certificates for the previous years, (Initially, for existing Liaison Offices, the designated AD banks may obtain confirmation from the Regional Office concerned about timely submission of the Certificate for previous years), and

The account of the Liaison Office maintained with the AD Category – I bank is being operated according to the terms and conditions stipulated in the approval.

Such extension may be granted under intimation to the Regional Office concerned, quoting the reference number of the approval letter and UIN.

It may be noted that in the case of Liaison Offices of entities engaged in insurance business, the application has to be forwarded to the Insurance Regulatory and Development Authority (IRDA). Further, no extension would be considered for LOs of entities which are NBFCs and those engaged in Construction and Development sectors. Upon expiry of the validity period, these entities have to either close down or be converted into a full-fledged Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity of the extant FDI policy.

iii) Closure of Branch / Liaison Office/s

With effect from July 01, 2008, 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), will 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. In terms of the aforementioned Regulation, following documents are required to be obtained by the designated AD Category – I bank :

- a) Copy of the Reserve Bank's permission for establishing the Office in India,
- 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 proceeds accruing from sources outside India has remained un-repatriated to India.
- c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s or an undertaking from the applicant and a certificate from a Chartered Accountant as mentioned in A. P. (DIR Series) Circular No. 56 dated November 26, 2002.
- d) Confirmation from the applicant that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.

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

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 Branch / Liaison Office 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 Branch / Liaison Office 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 Branch / Liaison Office 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. A copy of the undertaking submitted by the applicant along with the Chartered Accountant's Certificate shall be forwarded to the Income Tax Officer of the respective IT Circle as per the procedure laid down in the CBDT Circular enclosed with our A. P. (DIR Series) Circular No. 56 dated November 26, 2002.

7. All Branch/Liaison Offices may identify and designate an AD bank to whom they will submit the Activity Certificates as well as other formalities related to closure/winding up.

8. Cases which are not covered under the delegated powers will continue to be required to be forwarded to the Reserve Bank, through the designated AD Category – I bank.

9. 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.

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

11. 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.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager-in-Charge

Format of the Annual Activity Certificate

(To be submitted within one month from the date of finalization of the accounts).

To Whomsoever It May Concern

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

(Name of the Chartered Accountant)

ICAI code No.:

Address:

Place:

Date: