

RBI/2010-11/11
Master Circular No.11 /2010-11

July 01, 2010

To,

All Category - I Authorised Dealer banks

Madam / Sir,

**Master Circular on Establishment of Liaison / Branch /
Project Offices in India by Foreign Entities**

Establishment of Branch/Liaison /Project Offices in India is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with [Notification No. FEMA 22/ 2000-RB](#) dated May 3, 2000 as amended from time to time.

2. This Master Circular consolidates the existing instructions on the subject of "Establishment of Branch/Liaison/Project Offices in India by Foreign Entities" at one place. The list of underlying circulars/notifications consolidated in this Master Circular is furnished in the Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2011 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager-in-Charge

INDEX

(A)	General	2
(B)	Liaison Office	4
(C)	Branch Offices.....	6
(D)	Application for Undertaking Additional Activities or Additional Branch / Liaison Offices.....	7
(E)	Annual Activity Certificates to be Submitted by Branch/Liaison Offices	8
(F)	Closure of Branch/Liaison Offices	9
(G)	Project Office.....	10
(H)	Other General Conditions Applicable to Branch / Liaison / Project Offices of Foreign Entities in India.....	12
Annex 1.....		14
FNC.....		14
Annex 2.....		18
Format of the Letter of Comfort		18
Annex 3.....		19
Appendix.....		20
List of Notifications/Circulars consolidated in this Master Circular.....		20

Establishment of Branch/Liaison/Project Offices in India by Foreign Entities

(A) GENERAL

A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. The applications from such entities in **Form FNC (Annex-1)** will be considered by Reserve Bank under two routes:

- **Reserve Bank Route** — Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.
- **Government Route** — Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations / Non - Profit Organisations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

The following additional criteria are also considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

- **Track Record**

For Branch Office — a profit making track record during the immediately preceding five financial years in the home country.

For Liaison Office — a profit making track record during the immediately preceding three financial years in the home country.

- **Net Worth** [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a

Certified Public Accountant or any Registered Accounts Practitioner by whatever name].

- o For Branch Office — not less than USD 100,000 or its equivalent.

- o For Liaison Office — not less than USD 50,000 or its equivalent.

The application for establishing BO / LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents including

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
- Latest Audited Balance Sheet of the applicant entity.

Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies can submit a **Letter of Comfort** from their parent company as per **Annex -2**, subject to the condition that the parent company satisfies the eligibility criteria as prescribed above. 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.

The Branch / Liaison offices established with the Reserve Bank's approval will be allotted a **Unique Identification Number** (UIN) (www.rbi.org.in/scripts/Fema.aspx).

The BOs / LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

(B) LIAISON OFFICE

b.1 Permissible Activities for a Liaison Office

A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by an AD Category I bank.

A Liaison Office can undertake the following activities in India:

- i. Representing in India the parent company / group companies.
- ii. Promoting export / import from / to India.
- iii. Promoting technical/financial collaborations between parent/group companies and companies in India.
- iv. Acting as a communication channel between the parent company and Indian companies.

b.2. Liaison Office of Foreign Insurance Companies / Banks

Foreign Insurance companies can establish Liaison Offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Foreign banks can establish Liaison Offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

b.3 Extension of Validity of the Approval of Liaison Offices

The designated AD Category - I bank may 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 conditions and the application is otherwise in order.

- The LO should have submitted the Annual Activity Certificates for the 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 has to be granted, as expeditiously as possible, within a period of one month from the receipt of the request under intimation to the Regional Office concerned of the Reserve Bank and to the Chief General Manager–in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, quoting the reference number of the original approval letter and the UIN.

The application for extension of the validity period of the LOs of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank 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 companies)**. 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.

(C) BRANCH OFFICES

c.1 Permissible Activities

a). Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India:

- i. Export / Import of goods.¹
- ii. Rendering professional or consultancy services.
- iii. Carrying out research work, in areas in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v. Representing the parent company in India and acting as buying / selling agent in India.
- vi. Rendering services in information technology and development of software in India.
- vii. Rendering technical support to the products supplied by parent/group companies.
- viii. Foreign airline / shipping company.

Normally, the Branch Office should be engaged in the activity in which the parent company is engaged.

b) Retail trading activities of any nature is not allowed for a Branch Office in India.

c) A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.

d) Profits earned by the Branch Offices are freely remittable from India, subject

¹ Procurement of goods for export and sale of goods after import are allowed only on wholesale basis.

to payment of applicable taxes.

c.2 Branch Office in Special Economic Zones (SEZs)

- (i) Reserve Bank has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:
 - a) such units are functioning in those sectors where 100 per cent FDI is permitted;
 - b) such units comply with part XI of the Companies Act, 1956 (Section 592 to 602);
 - c) such units function on a stand-alone basis.
- (ii) In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an AD Category – I bank with the documents as mentioned under "Closure of Liaison / Branch Office" except the copy of the letter granting approval by the Reserve Bank.

c.3 Branches of Foreign Banks

Foreign banks do not require separate approval under FEMA, for opening branch office in India. Such banks are, however, required to obtain necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development, Reserve Bank.

(D) APPLICATION FOR UNDERTAKING ADDITIONAL ACTIVITIES OR ADDITIONAL BRANCH / LIAISON OFFICES

Requests for undertaking activities in addition to what has been permitted initially by the Reserve Bank may be submitted through the designated AD Category -I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange

Department, Foreign Investment Division, Central Office, Mumbai, justifying the need with comments of the designated AD Category - I bank.

Requests for establishing additional BO / LOs may be submitted through fresh FNC form (Annex 1), duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India as explained above. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

- If the number of Offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s.
- The applicant may identify one of its Offices in India as the Nodal Office, which will coordinate the activities of all Offices in India.

(E) ANNUAL ACTIVITY CERTIFICATES TO BE SUBMITTED BY BRANCH/LIAISON OFFICES

Branch Offices / Liaison Offices have to file Annual Activity Certificates (Annex 3) from Chartered Accountants, at the end of March 31, on or before April 30, to the designated AD Category I bank and a copy to the Directorate General of Income Tax (International Taxation), New Delhi.

The certificates are to be filed by the following offices as applicable:

- (a) In case of a sole BO/LO, by the BO/LO concerned;
- (b) In case of multiple BO/LO, a combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/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.

(F) CLOSURE OF BRANCH/LIAISON OFFICES

At the time of winding up of Branch/Liaison offices the company has to approach the designated AD Category - I bank with the following documents:

- 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 un-repatriated 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.

- f) Any other document/s, specified by the Reserve Bank while granting approval.

The designated AD Category - I banks has to 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 can 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.

Closure of such BO / LO has to 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 or cases are not covered under delegated powers, the AD Category - I bank may forward the application to the Reserve Bank, with their observations, for necessary action. 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.

(G) PROJECT OFFICE

g.1 General Permission

Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, Central Office, for approval.

g.2 Opening of Foreign Currency Account

AD Category – I banks can open **non-interest** bearing Foreign Currency Account for Project Offices in India subject to the following:

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority concerned.
- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project Office can open **two Foreign Currency Accounts**, usually one denominated in USD and other in home currency, provided both are maintained with the same AD category–I bank.
- iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/group company abroad or bilateral / multilateral international financing agency.
- v. The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the branch concerned of the AD. Further, the Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.
- vi. The Foreign Currency accounts have to be closed at the completion of the Project.

g.3 Intermittent Remittances by Project Offices in India

- (i) AD Category – I bank can permit intermittent remittances by Project Offices pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:
 - a) The Project Office submits an Auditors' / Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.
 - b) An undertaking from the Project Office that the remittance will not, in any way, affect the completion of the Project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.
- (ii) Inter-Project transfer of funds requires prior permission of the Regional Office concerned of the Reserve Bank under whose jurisdiction the Project Office is situated.

(H) OTHER GENERAL CONDITIONS APPLICABLE TO BRANCH / LIAISON / PROJECT OFFICES OF FOREIGN ENTITIES IN INDIA

- (i) Without prior permission of the Reserve Bank, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.
- (ii) Partnership / Proprietary concerns set up abroad are not allowed to establish Branch /Liaison/Project Offices in India.
- (iii) Entities from Nepal are allowed to establish only Liaison Offices in India.
- (iv) Branch/Project Offices of a foreign entity, excluding a Liaison Office are permitted to acquire property for their own use and to carry out permitted/incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed

to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years.

(v) Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.

(vi) Transfer of assets of Liaison / Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.

(vii) Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected

- a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year
- b. A Chartered Accountant's certificate certifying
 - i. the manner of arriving at the remittable profit
 - ii. that the entire remittable profit has been earned by undertaking the permitted activities
 - iii. that the profit does not include any profit on revaluation of the assets of the branch.

(viii) Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.

FNC

Application for Establishment of Branch/Liaison Office in India

A. General Instructions to Applicants:

The application form shall be completed and submitted to the **AD Category - I bank designated** by the applicant for onward transmission to the Chief General Manager-in -Charge, Reserve Bank, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400001 along with the documents mentioned in item (viii) of the Declaration.

No.	Details	Particulars
1.	Full name and address of the applicant. Date and Place of incorporation / registration Telephone Number(s) Fax Number(s) E-mail ID	
2.	Details of capital i) Paid-up capital ii) Free Reserves/Retained earnings as per last audited Balance Sheet/Financial Statement iii) Intangible assets, if any	
3.	Brief description of the activities of the applicant.	
4.	i) Value of goods imported from and / or exported to India by the applicant during each of the last three years: a) Imports from India b) Exports to India	

	<p>ii)Particulars of existing arrangements if any, for representing the company in India.</p> <p>iii) Particulars of the proposed Liaison/ Branch Office:</p> <p>a) Details of the activities/ services proposed to be undertaken/ rendered by the office.</p> <p>b) Place where the office will be located.</p> <p>c) Phone number</p> <p>d) E-mail ID</p> <p>e) Expected number of employees (with number of foreigners)</p>	
5.	<p>i) Name and address of the banker of the applicant in the home country</p> <p>ii) Telephone & Fax Number</p> <p>iii) E-mail ID</p>	
6.	Any other information which the applicant company wishes to furnish in support of this application.	
7.	<p>For Non-profit / Non-Government Organisations:</p> <p>(i) Details of activities carried out in the host country and other countries by the applicant organization.</p> <p>(ii) Expected level of funding for operations in India.</p> <p>(iii) Copies of the bye-laws, Articles of Association of the organisation.</p>	

DECLARATION

We hereby declare that:

- i) The particulars given above are true and correct to the best of our knowledge and belief.
- ii) Our activities in India would be confined to the activities indicated in column 4(iii) (a) above.
- iii) If we shift the office to another place within the city, we shall intimate the designated AD Category - I bank and the Reserve Bank. In the event of shifting the Office to any other city in India, prior approval of the Reserve Bank will be obtained.
- iv) We will abide by the terms and conditions that may be stipulated by the Government of India / Reserve Bank / designated AD Category - I bank from time to time.
- v) We, hereby commit that we are agreeable to a report / opinion sought from our bankers abroad by the Government of India / Reserve Bank.
- vi) We understand that the approval, if granted, is from FEMA angle only. Any other approvals / clearances, statutory or otherwise, required from any other Government Authority/ Department/ Ministry will be obtained before commencement of operations in India.
- vii) We have no objection to the Reserve Bank placing the details of approval in public domain.
- viii) We enclose the following documents:
 1. Copy of the Certificate of Incorporation / Registration attested by the Notary Public in the country of registration
[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].
 2. Latest Audited Balance sheet of the applicant company.
[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public

Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted]

3. Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

(Signature of Authorised Official
of the Applicant Company)

Name:

Designation:

Place:

Date:

FORMAT OF THE LETTER OF COMFORT

The Chief General Manager-in-Charge,
Reserve Bank of India,
Foreign Exchange Department,
Foreign Investment Division,
Central Office, Fort,
Mumbai- 400001.

Dear Sir,

Sub: Application for establishment of Branch / Liaison Office in India by our subsidiary / group company, M/s_____

You may kindly refer to the application made by our subsidiary / group company, M/s_____to your office for establishing Branch / Liaison Office in India.

2. In this connection, we, _____(the parent company) undertake to provide the necessary financial support for our subsidiary / group company's operations as a Branch / Liaison Office in India. Any liability that may arise due to the functioning of the Branch/Liaison Office in India will be met by us (the parent company), in case of inability on part of the Branch/Liaison Office to do so.

3. We are also enclosing the financial background of our company in the form of our latest Audited Balance Sheet / Account Statement certified by a Certified Public Accountant.

Yours faithfully,

()
Authorised Representative of the parent company

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:

LIST OF NOTIFICATIONS/CIRCULARS CONSOLIDATED IN THIS MASTER CIRCULAR

<http://www.rbi.org.in/scripts/Fema.aspx>

Sr. No.	Notification / Circular No.	Date
1	Notification no. FEMA 22/2000-RB	May 03, 2000
2	Notification No FEMA 13/2000-RB	May 03, 2000
3	Notification No FEMA 21/2000-RB	May 03, 2000
4	Notification no. FEMA 95/2003-RB	July 02, 2003
5	Notification no. FEMA 102/2003-RB	Oct. 03, 2003
6	Notification no. FEMA 134/2005-RB	May 07, 2005
7	Notification no. FEMA 161/2005-RB	Sept 18,2007
8	Notification no. FEMA 198/2009-RB	Sept. 24, 2009
9	Notification no. FEMA 204/2009-RB	April 05, 2010
10	A.P. (DIR series) Circular No. 3	July 06,2002
11	A.P. (DIR series) Circular No. 37	Nov. 15, 2003
12	A.P. (DIR series) Circular No. 58	Jan. 16, 2004
13	A.P. (DIR series) Circular No. 39	April 25, 2005
14	A.P. (DIR series) Circular No. 44	May 17, 2005
15	A.P. (DIR series) Circular No. 02	July 31, 2008
16	A.P. (DIR series) Circular No. 23	Dec. 30, 2009
17	A.P. (DIR series) Circular No. 24	Dec. 30, 2009

Note:It is clarified for the information of all users that the Master Circular need not necessarily be exhaustive and a reference to the relevant A.P. (DIR Series) Circular is needed, wherever further information/clarification is required.