



RESERVE BANK OF INDIA
Mumbai - 400 001

RBI/2015-16/397

A.P. (DIR Series) Circular No.69 [(1)/22(R)]

May 12, 2016

To

All Authorised Dealers Category - I Banks

Madam / Sir,

Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to [Notification No. FEMA 22\(R\) /2016-RB dated March 31, 2016](#) viz. Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016. The salient provisions of the procedure for a person resident outside India to open a branch office or a liaison office or a project office are outlined as under.

2. Eligibility criteria

- i. Applications from persons resident outside India for establishing Branch Office (BO) / Liaison Office (LO)/ Project Office (PO) or any other place of business in India shall be considered by the AD Category-I bank as per the guidelines issued by the Reserve Bank of India. If the application to open a BO/LO/PO is received from an entity resident outside India whose principal business falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms of [FEMA Notification No. 20/2000-RB dated May 3, 2000](#), as amended from time to time, the AD Category-I bank may consider such applications under the delegated powers.
- ii. An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:
 - a. the applicant is a citizen of or is registered/incorporated in Pakistan;

- b. the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. There shall be no requirement of any approval from RBI also only for such cases;
- d. The applicant is a Non-Government Organisation (NGO), a Non-Profit Organisation, or a Body/ Agency/ Department of a foreign government.

Such applications may be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110 001 who shall process the applications in consultation with the Government of India.

- iii. The non-resident entity desirous of establishing a BO/LO in India should have a financially sound track record as provided in Regulation 4 (a) of the Notification.
- iv. An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) [as provided in Regulation 4. a. of the Notification] from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit. The LOC should be issued by the applicant's parent / group company which undertakes to fund the operations if required.

3. Procedure for applying

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC [as provided in Regulation 4.c. of the Notification], to a designated AD Category - I bank (i.e. an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations)

along with the prescribed documents mentioned in the Form and the LOC, wherever applicable. The AD Category-I bank shall, after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms, grant approval to the foreign entity for establishing BO/LO/PO in India. The AD Category-I banks may frame appropriate policy for dealing with these applications in conformity with the FEMA Regulations and Directions.

4. Issuance of UIN by Reserve Bank of India

For the limited purpose of uploading and maintenance of up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India on Reserve Bank's website, the AD Category-I bank shall before issuing the approval letter to the applicant forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/LO. After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

5. Validity of LO and PO

The validity of an LO is generally for three years [as provided in Regulation 4.d. of the Notification], except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity is two years only.

The validity of the PO is for the tenure of the project.

6. Other conditions

- i. An applicant that has received a permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The AD category I bank in turn shall inform Reserve Bank of India accordingly. In case an approval granted by the AD category I bank has either been surrendered by the applicant or has expired

without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly.

- ii. In accordance with Regulation 4.c. of the Notification, the approval granted by the AD Category-I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require prior approval of Reserve Bank of India.
- iii. All applications for establishing BO/LO in India by foreign banks and insurance companies shall be dealt with as per the directions issued by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA) respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.
- iv. There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to the conditions as provided in Regulation 3.c. of the Notification.

7. Opening of Bank Account by BO/LO/PO

- i. An LO may open an account with the designated AD category I Bank in India for receiving remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India. The permitted Credits and Debits to the account shall be:
 - a. Credits
 - 1. Funds received from Head Office through normal banking channels for meeting the expenses of the office.

2. Refund of security deposits paid from LO's account or paid directly by the Head Office through normal banking channels.
3. Refund of taxes, duties etc., paid from LO's bank account.
4. Sale proceeds of assets of the LO.

b. Debits

Only for meeting the local expenses of the office.

- ii. A BO may open a bank account with any AD Category-I Bank in India for its business operations in India. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. Debits to this account shall be for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.
- iii. An entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its PO in India. All other foreign entities who have been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank.

8. Foreign currency accounts by PO

POs can open non-interest bearing foreign currency accounts with AD Category – I banks subject to the following:

- i. The PO has been established in India as per these Regulations.
- ii. The contract governing the project specifically provides for payment in foreign currency.
- iii. Each PO can open two foreign currency accounts, usually one denominated in USD and the other in home currency of the project awardee, provided both are maintained with the same AD Category-I bank.

- iv. The permissible debits to the account shall be payment of project related expenses and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/group company abroad or bilateral / multilateral international financing agencies.
- v. The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category-I bank.
- vi. The foreign currency accounts have to be closed at the completion of the project.

9. Extension of validity of the approval of LO and PO

- i. Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the AD Category-I bank concerned under whose jurisdiction the LO/Nodal office is located. 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, if the applicant has complied with the following conditions and the application is otherwise in order:
 - a. The LO should have submitted the Annual Activity Certificates for the previous years and
 - b. 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 letter.

Such extension has to be granted as expeditiously as possible and in any case not later than one month from the receipt of the request, under intimation to the General Manager, Reserve Bank of India, CO Cell, New Delhi quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on the website immediately.

- ii. As provided in Regulation 4.d. of the Notification, NBFCs and entities engaged in construction and development sectors are permitted to open an LO for two years only. LOs opened by such entities (excluding infrastructure development companies) shall not be allowed any extension of time. Upon expiry of the validity period, the LOs shall have to either

close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

- iii. Extension of validity of PO needs to be reported by the AD Category-I bank to the CO Cell, RBI, New Delhi.

10.Registration with Police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the State Police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

11.Application for additional offices and activities

- i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
 - a. 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 and it shall require prior approval of the Reserve Bank.
 - b. The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
 - c. Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank. Changes in the postal address may be intimated to the CO Cell, New Delhi by the AD Category-I bank at the earliest.

- ii. Requests for undertaking activities in addition to what has been permitted initially by Reserve Bank of India/ AD Category-I bank may be submitted by the applicant to the Reserve Bank through the designated AD Category -I bank justifying the need.

12. Extension of fund and non-fund based facilities

As provided in Regulation 4.h. of the Notification, AD Category-I bank may, extend fund/non-fund based facilities to BOs/POs only.

13. Remittance of profit/surplus

- i. BOs are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the documents given in Regulation 4.i.I. of the Notification to the satisfaction of the AD Category-I bank through whom the remittance is effected.
- ii. AD Category – I bank can permit intermittent remittances by POs pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the documentation laid down in Regulation 4.i.II. of the Notification.

14. Annual Activity Certificate by BO/LO/PO

- i. The Annual Activity Certificate (AAC) as at the end of March 31 each year along with the documents laid down in Regulation 4.I. of the Notification needs to be submitted by the following:
 - a. In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
 - b. In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

- ii. The designated AD Category - I bank shall scrutinize the AACs 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. In the event

of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank, the same should immediately be reported to the General Manager, Reserve Bank of India, CO Cell, New Delhi, along with the copy of the AAC and their comments thereon.

15. Closure of BO/LO/PO and remittance of winding up proceeds

- i. Requests for closure of the BO / LO/ PO and for remittance of winding-up proceeds may be submitted to the designated AD Category - I bank by the BO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submitted along with the documents laid down in Regulation 4.m. of the Notification.
- ii. AD Category-I bank shall send a consolidated list (as per Annex) of all the BOs/LOs/ POs for which a UIN has been granted by RBI, excluding those of banks and insurance companies, closed by them during the month, by the fifth of the succeeding month, to the General Manager, Reserve Bank of India, CO Cell, New Delhi.

16. Guidance note for the AD Category-I bank

- i. Once it establishes a place of business in India, a BO/LO/PO or any other place of business by whatever name called is required to register with the Registrar of Companies (ROCs) if such registration is required under the Companies Act, 2013.
- ii. The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.
- iii. The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
- iv. A BO/LO/PO, even if present in multiple locations, is required to transact through the designated AD Category I bank who shall be responsible for due diligence, KYC norms etc., in respect of the BO/LO/PO concerned. POs can open bank accounts either in the place of their operations or in the place of their registration, as per their convenience.
- v. BO/LO/PO can change their existing AD Category-I bank subject to both the AD banks giving consent in writing for the transfer and the transferring

AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.

- vi. Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
- vii. As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.
- viii. AD Category-I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO/PO provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO/LO/PO 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.
- ix. In case a BO/LO has been established and continues to exist without approval of the Reserve Bank, it may approach its AD Category-I bank to regularise its office(s) under the extant instructions contained in the Notification and this circular even if permission of Reserve Bank was not required as per the regulations existing at the time of setting up of the office. Such cases may be brought to the notice of the Reserve Bank immediately for allotment of UIN. The foreign entities who may have established LO or BO with the permission from the Government of India in the pre-FEMA period shall also approach their AD Category-I bank with a copy of the said approval for allotment of a UIN by the Reserve Bank.
- x. Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and if the application to this effect is received with the Board Resolution for change of name and documents/certificate from ROC India showing change of name, wherever applicable. The change in name of the BO/LO should be reported to FED, CO Cell, New Delhi. Where change in name is requested on account of acquisitions or mergers of foreign entities involving change in ownership, the acquired entity or

new entity is required to apply afresh by closing the existing entity. Foreign entities should note that the approvals are given by the Reserve Bank/AD Category-I bank after detailed scrutiny as per laid down guidelines and FDI policy and hence the approvals given to one foreign entity is not transferrable to another foreign entity.

- xi. Change in the Top Management or CEO/MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.

17. Transfer of assets of BO/LO/PO

Proposals for transfer of assets may be considered by the AD Category-I bank only from BOs/LOs/POs who are adhering to the operational guidelines such as submission of AACs (up to the current financial year) at regular annual intervals; have obtained PAN from IT Authorities and have got registered with ROC under the Companies Act 2013, if necessary. Also,

- i. Transfer of assets by way of sale to the JV/WoS shall be allowed by AD Category-I bank only when the non-resident entity intends to close their BO/LO/PO operations in India.
- ii. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.
- iii. The assets should have been acquired by the BO/LO/PO from inward remittances or profit/surplus generated in case of BO/PO and no intangible assets such as good will, pre-operative expenses should be included. No revenue expenses such as lease hold improvements incurred by the BO/LO can be capitalised and transferred to JV/WOS.
- iv. AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
- v. Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.

- vi. Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD Category-I banks after satisfying themselves about the bonafides of the transaction.

18. The new regulations have been notified vide [Notification No. FEMA 22\(R\)/2016-RB dated March 31, 2016](#) c.f. G.S.R. No. 384(E) dated March 31, 2016 and have come into force with effect from March 31, 2016. The Master Direction No. 10 of 2015-16 (Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities) and Master Direction No.18 of 2015-16 (Reporting under Foreign Exchange Management Act, 1999) are being updated accordingly to incorporate the above changes.

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

20. The directions contained in this circular have been issued under Section 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

(Shekhar Bhatnagar)
Chief General Manager-in- charge

Annex

Name of the AD bank: _____

(a) Details of the BO/LO/PO opened during the month of _____

Sr. No	Name of the foreign entity	Country of Incorporation	Whether BO/LO/PO opened	UIN	Date of approval	Address of office in India

(b) Details of the BO/LO/PO closed during the month of _____

Sr. No	Name of the foreign entity	Country of Incorporation	Whether BO/LO/PO closed	UIN	Date of closure	Address of office in India