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DSK Legal Knowledge Center

Updates on

- Corporate

## CORPORATE

Establishment of Branch Office (“BO”)/Liaison Office (“LO”) in India by foreign entities

The Reserve Bank of India (“RBI”) considers applications in Form FNC 1 for establishment of BO/LO by foreign entities where the principal business of the foreign entity falls under sectors where 100 per cent foreign direct investment (“FDI”) is permissible under the automatic route. The RBI also considers applications for establishment of BO/LO by foreign entities where the principal business of the foreign entity does not fall under sectors where 100 per cent FDI is permissible under the automatic route in consultation with the Government of India, Ministry of Finance.

With the objective of achieving greater transparency, the RBI has decided to place the eligibility criteria and the procedural guidelines for establishment of BO and LO in India, in the public domain<sup>1</sup>. In addition, the RBI has also replaced the existing Form FNC 1 with new Form FNC for making application for establishment of BO/LO.

### A. Eligibility criteria for establishment of BO/LO in India

- The RBI would continue to consider applications for establishment of BO and LO as hitherto. However, the applicants would have to file the application through their authorized dealer (designated bank of the applicant in India) and would have to fulfill the following criteria for establishment of BO/LO. The authorized dealer would have to satisfy itself of

<sup>1</sup> A. P. (DIR Series) Circular No. 23 and 24 dated December 30, 2009.

the credentials of the applicant and fulfillment of the eligibility criteria by the applicant and forward the application to the RBI with its comments.

| Criteria               | BO  | LO   |
|------------------------|---|--|
| Track record           | Profit making track record during the immediately preceding five financial years. | Profit making track record during the immediately preceding three financial years. |
| Net worth <sup>2</sup> | Not less than US\$ 100,000 or its equivalent.                                     | Not less than US\$ 50,000 or its equivalent.                                       |

- Applicants who are unable to fulfill the eligibility criteria may provide a letter of comfort (in the prescribed format) from their parent company, where the parent company fulfills the eligibility criteria.
- The RBI reserves the right to reject any application for establishment of BO/LO for non-fulfillment of any other conditions not specifically prescribed or in the public interest. The RBI also reserves the right to verify the activities of the

<sup>2</sup> Net Worth means the 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.

existing BO/LO and withdraw the permission granted if the circumstances so warrant or due to changes in the policy.

#### B. Scope of activities of BO/LO

- The activities permitted to be undertaken by a BO/LO have not been revised and are as mentioned below<sup>3</sup>. However, the RBI has clarified that the BO should be engaged in the activity in which the parent company is engaged.
- Permitted activities for a BO
  - Export/import of goods.
  - Rendering professional or consultancy services.
  - Carrying out research work, in which the parent company is engaged.
  - Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
  - Representing the parent company in India and acting as buying/ selling agent in India.

<sup>3</sup> Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000.

- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Foreign airline/shipping company.

• Permitted activities for a LO

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

C. Additional offices / Additional activities

- Requests for establishing additional offices of the BO/LO or for undertaking additional activities may be submitted to the RBI through the authorized dealer in Form FNC, duly supported with adequate justification. However, the documents mentioned in Form FNC need not be resubmitted, if there are no changes to the documents 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. Applicants operating multiple offices in India will have to identify one of the office as nodal office which will coordinate the activities of all its offices.

D. Extension of validity period of the approval

- Requests for extension of time for continuance of LO [other than those from entities in the Insurance sector, banks, Non-Banking Financial Companies (“NBFCs”) and Construction and Development sectors (excluding infrastructure development companies)] may be submitted to the authorized dealer (with effect from February 1, 2010) concerned under whose jurisdiction the LO/nodal office is located before the expiry of the validity of the approval. No extension would be considered for LO 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/Wholly Owned Subsidiary, in conformity with the extant FDI policy.

- Applications for extension of time for continuance of BO/LO from foreign banks and insurance companies will continue to be directly received and examined by the Department of Banking Operations and Development, RBI (“DBOD”) and Insurance Regulatory and Development Authority (“IRDA”) respectively, as hitherto.

#### E. Closure of BO/LO

- Requests for closure of the BO/LO and remittance of winding up proceeds of BO/LO may be submitted to the authorized dealer (with effect from February 1, 2010) by the BO/LO or their nodal office, as the case may be. The application for winding up may be submitted along with the documents as mentioned in the Foreign Exchange Management (Remittance of Assets) Regulations, 2000<sup>4</sup>. In addition, the applicants will have to submit a report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956.

- Requests for closure of the BO/LO from foreign banks and insurance companies would require a prior closure permission from the sectoral regulator i.e. DBOD/IRDA, as the case may be.

#### F. Annual activity certificate

- With effect from February 1, 2010, the annual activity certificate (in the prescribed format) as at the end of March 31 shall be submitted, on or before April 30, to the authorized dealer with a copy to the Directorate General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002, by the concerned BO/LO or its nodal office as the case may be. Any adverse comments in the annual activity certificate will be reported immediately by the authorized dealer to the RBI.

#### G. Unique Identification Number (“UIN”)

- A UIN will be allotted to both the existing as well as new BO/LO, which is required to be quoted in all future references made to the RBI by the BO/LO/authorized dealer. With effect from February 1, 2010, existing BO/LO will also have to

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<sup>4</sup> Regulation 6(1)(iii) of the Foreign Exchange Management (Remittance of Assets) Regulations, 2000.

approach the RBI through their authorized dealer for their requests/references. Further, the RBI has indicated that BO/LO shall obtain Permanent Account Number from the Income Tax Authorities and report the same in the annual activity certificate.

The disclosure of the above eligibility criteria and procedural guidelines by the RBI provides greater clarity to applicants intending to establish BO/LO in India and will reduce the procedural delays in obtaining extensions/closure approvals for existing BO/LO.

For more details and format of the prescribed documents you may refer to the A. P. (DIR Series) Circular No. 23 and 24 dated December 30, 2009 issued by the RBI.

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APD24311209.pdf>

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/3109APDIR23.pdf>

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